

1 NICOLA T. HANNA
United States Attorney
2 LAWRENCE S. MIDDLETON
Assistant United States Attorney
3 Chief, Criminal Division
STEVEN R. WELK
4 Assistant United States Attorney
Chief, Asset Forfeiture Section
5 JOHN J. KUCERA (California Bar No. 274184)
Assistant United States Attorney
6 Asset Forfeiture Section
Federal Courthouse, 14th Floor
7 312 North Spring Street
8 Los Angeles, California 90012
Telephone: (213) 894-3391
9 Facsimile: (213) 894-0142
E-mail: John.Kucera@usdoj.gov

10 Attorneys for Plaintiff
11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 IN THE MATTER OF THE SEIZURE OF:

No. 18-MJ-02878

15 UP TO AND INCLUDING
16 \$250,000.00 IN BANK FUNDS HELD
IN WESTERN ALLIANCE ACCOUNT
17 #XXXX6979

GOVERNMENT'S RESPONSE TO
CLAIMANTS' APPLICATION TO STAY
EXECUTION OF SEIZURE WARRANTS

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22 Plaintiff United States of America (the "Government"), by and
23 through its counsel of record, the United States Attorney's Office
24 for the Central District of California and Assistant United States
25 Attorney John J. Kucera, requests that this Court reject Claimants'
26 Application to Stay Execution of Seizure Warrants because the relief
27 the Application seeks is invalid as a matter of law. In support of
28 its motion, the Government states as follows:

1 **I. BACKGROUND**

2 On April 5, 2018, in the District of Arizona, pursuant to a plea
3 agreement, defendants Backpage.com, LLC; Website Technologies, LLC;
4 Posting Solutions, LLC; Amstel River Holdings, LLC; Ad Tech BV; and
5 UGC Tech Group BV (collectively, the "Backpage Defendants"), plead
6 guilty to an Information charging 18 U.S.C. § 1956(h) (money
7 laundering conspiracy). (See *United States v. Backpage.com LLC, et*
8 *al.*, 18-CR-00465-SPL, Dkt. 4). As part of the plea, the Backpage
9 Defendants agreed to forfeit any asset involved in or "traceable to .
10 . . the proceeds of the offense(s), or which was used to facilitate
11 the commission of the offense(s)," to which they were pleading
12 guilty. (*Id.* at Dkt. 8-1; Para. 8.b). The property the Backpage
13 Defendants agreed to forfeit included, but expressly was not limited
14 to, a list of assets set forth in the plea agreement. (*Id.*) On May
15 16, 2018, pursuant to Rule 32.2(b), the District of Arizona Court
16 entered a Preliminary Order of Forfeiture. (*Id.* at Dkt. 22), which
17 incorporated the list of forfeitable assets identified in the plea
18 and expressly provided that the Arizona Court would "retain
19 jurisdiction to enforce this Order, and to amend it as necessary
20 pursuant to Fed. R. Criminal. P. 32.2(e)." (*Id.*).

21 On March 28, 2018, and on July 25, 2018, in the District of
22 Arizona, the government filed an indictment and a first superseding
23 indictment, respectively, with a trial date presently set for January
24 15, 2020, See *United States v. Lacey, et al.*, CR-18-00422-SPL (the
25 "criminal matter"). The indictment and first superseding indictment
26 included forfeiture allegations that seek, among other things, all of
27 the assets seized pursuant to seizure warrants issued in the Central
28 District of California. On October 5, 9, 10, and 11, 2018, the

1 government filed a series of civil forfeiture complaints seeking to
2 forfeit almost the exact same assets identified in the indictments.
3 *See In the Matter of Seizure of: Any and All Funds Held In Republic*
4 *Bank Of Arizona Accounts xxxx1889, et al.*, CV-18-6742-RGK-PJW (and
5 related cases) (collectively, the "CDCA civil forfeiture actions").
6 Thereafter, on October 23, 2018, the Honorable R. Gary Klausner,
7 District Court Judge for the Central District of California, granted
8 the government's motion to stay the CDCA civil forfeiture actions
9 pending the conclusion of the related criminal matter.¹ (*See Id.* Dkt.
10 85.)

11 On October 31, 2018, the Honorable Rozella A. Oliver, United
12 States Magistrate Judge for the Central District of California (the
13 "CDCA Court"), issued twelve seizure warrants for funds held in
14 seventeen different bank accounts, which were held in the names of
15 fifteen different law firms (collectively, the "Seizure Warrants").
16 The government alleges that the assets identified in the Seizure
17 Warrants are involved in or traceable to those assets the Backpage
18 Defendants agreed to forfeit as part of the plea agreement. The
19 Seizure Warrants were issued upon the CDCA Court's probable cause
20 finding that, pursuant to 18 U.S.C. § 981(a)(1)(A) and (C), the funds
21 were property involved in or traceable to money laundering, or were
22 proceeds of violations of 18 U.S.C. §§ 1952, 1956, and 1957
23 (interstate and foreign travel or transportation in aid of
24 racketeering enterprises, and money laundering offenses,

25
26 ¹ Claimants sought to appeal the District Court's grant of the stay
27 to the 9th Circuit. However, on October 31, 2018, the 9th Circuit
28 Clerk identified the grant of a stay as not appearing to be a final
or appealable order, and the Clerk directed Claimants to dismiss
their appeal or show cause why it should not be dismissed. Claimants
since have filed a response to the Order to Show Cause, but the
Circuit has not yet ruled.

1 respectively). Thereafter, in the District of Arizona criminal
2 matter, several potential claimants to the assets sought by the
3 Seizure Warrants (including most, if not all, of the defendants named
4 in *United States v. Lacey, et al.* (collectively, hereafter
5 "Claimants")) filed a Motion to Stay and Vacate the Seizure Warrants.
6 On November 16, 2018, the District of Arizona Court denied Claimants'
7 Motion.

8 Now, on November 20, 2018, Claimants have filed the instant
9 Application. However, by their own terms, the Seizure Warrants have
10 expired (more than 14 days having passed since their being issued),
11 and the government does not now seek (even if it could) to execute
12 these Seizure Warrants. Accordingly, this matter is moot, and the
13 Court should dismiss Claimants' Application.

14 II. ARGUMENT

15 A. Claimants' Application To Stay Is Moot Because It Asserts No 16 Judicial Claim

17 For a court to hear a case, "it must be 'likely,' as opposed to
18 merely 'speculative,' that the injury will be 'redressed by a
19 favorable decision.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555,
20 561 (1992) (quoting *Simon v. Eastern Ky. Welfare Rights Organization*,
21 426 U.S. 26, 38, 43 (1976)). Article III's "case or controversy"
22 requirement limits courts to "resolv[ing] ... real and substantial
23 controvers[ies] admitting of specific relief through a decree of a
24 conclusive character, as distinguished from an opinion advising what
25 the law would be upon a hypothetical state of facts." *Preiser v.*
26 *Newkirk*, 422 U.S. 395, 401 (1975) (citation and internal quotation
27 marks omitted); accord *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227,
28

241 (1937). Thus, a court cannot render a judgment unless its decision will bind the parties.

Here, there is no case or controversy because, as explained above, the Seizure Warrants that are the subject of Claimants' application have expired, and the government is not seeking to execute those Seizure Warrants. With no pending case or controversy before this Court, a judgment here would only result in an impermissible advisory opinion.

B. Claimants' Request to Notify

Finally, the government takes no position on Claimants' desire to provide "notice to all magistrate judges of this Court" of Claimants' opinions regarding these (or any other) seizure warrants (See Application, p. 1).

III. CONCLUSION

For the forgoing reasons, the government respectfully requests that this Court dismiss Claimants' Application as moot.

Dated: November 27, 2018

Respectfully submitted,

NICOLA T. HANNA
United States Attorney

LAWRENCE S. MIDDLETON
Assistant United States Attorney
Chief, Criminal Division

/s/John J. Kucera
JOHN J. KUCERA
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

PROOF OF SERVICE BY E-MAILING

I am over the age of 18 and not a party to the within action. I am employed by the Office of the United States Attorney, Central District of California. My business address is 312 North Spring Street, 14th Floor, Los Angeles, CA 90012.

On **November 27, 2018**, I served a copy of: **GOVERNMENT'S RESPONSE TO CLAIMANTS' APPLICATION TO STAY SEIZURE WARRANT EXECUTION** upon each person or entity named below by attaching a copy to an e-mail provided by the receiving person or entity per request of the receiving person or entity.

TO: tbienert@bmkattorneys.com; kmiller@bmkattorneys.com; glinenberg@birdmarella.com and aneuman@birdmarella.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: **November 27, 2018** at Los Angeles, California.

/s/ **S. Beckman**
SHANNEN BECKMAN